

Practical Tools for Navigating and Drafting Government Subcontracting Agreements

Bidding and Winning Subcontracts



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Know Your Responsibilities and The Laws (FAR) That Govern Federal Contracts

Subpart 9.1—Responsible Prospective Contractors

•104-4 Subcontractor responsibility.

•(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

•(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

Small Business Utilization Regulations

Subpart 19.7—The Small Business Subcontracting Program

19.704 Subcontracting plan requirements

19.705 Responsibilities of the contracting officer under the subcontracting assistance program.

19.705-1 General support of the program.

The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award-fee contracting (see the clause at [52.219-10](#), Incentive Subcontracting Program, and [19.708\(c\)](#)). This subsection does not apply to SDB subcontracting (see [19.1203](#)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.

Written Agreement

What is a Service Contract Agreement

A service contract agreement is a legal document that outlines the agreed terms as part of a professional agreement. This type of service agreement is utilized in both the Commercial and Federal contract arena. It is also, often used when a company hires an outsource worker, such as a consultant who provides a service, to complete projects within the business. A service contract agreement is established between the two signing parties to legally protect both of the businesses.

However within a Prime to Sub Contract Agreement – Flow-Downs

You will find that not all FAR Clauses carry the requirement to be put in the subcontract agreement – some however, are mandatory for the Prime to Flow down to the Sub. Therefore, Review all of the FAR subparts within the base contract to determine which apply to your SOW within your Sub-contract. The one FAR Clause that will always flow-down when the base contract contains GFE/GFP will be 52.245-1.

Terms of a Sub-contract

Know that it is your responsibility to determine the appropriate staffing necessary to perform the contract work. As a sub-contractor you are also responsible for complying with minimum wage and benefits requirements for each classification performing work on the contract.

Therefore, within your teaming agreement or other type of agreement with the prime it should be clear what part of the contract you are responsible for and how you are going to staff that part; before you talk pricing.

Period of Performance – Should be shown within the document as well as statement on the exercising of option years

Invoice Procedures –Should be clear and detailed within the document

Take the time to review and read the complete sub-contract compare it with your teaming agreement (if you have one) and do not sign until you are completely in agreement with all of the terms and conditions/and the scope of work.

The McNamara-O' Hara Service Contract Act (SCA)

- **The McNamara-O' Hara Service Contract Act requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The Department of Labor issues wage determinations on a contract-by-contract basis in response to specific requests from contracting agencies. These determinations are incorporated into the contract.**
- **For contracts equal to or less than \$2,500, contractors are required to pay the federal minimum wage as provided in Section 6(a)(1) of the Fair Labor Standards Act.**
- **For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to SCA-covered contracts.**

SCA Checklist

Checklist for SCA Conformances:

- The classification must be appropriate for the contract work.
- The contractor cannot propose a new classification by combining job duties from two or more existing classifications on the wage determination, or propose a new classification that performs only part of the duties of an existing classification.
- The proposed classification cannot be a "trainee" or a "helper".
- The proposed wage rate for the new classification should generally be no lower than the wage rate of the lowest skilled classification on the determination.
- Conformance requests should not be submitted for exempt classifications (project managers, full-time supervisors, professionals such as engineers).
- The proposed rate should bear a reasonable relationship to the wage rates listed on the wage determination. The proposed fringe benefits should be the same as listed on the wage determination.
- The contractor must attach a brief job description to each SF1444 request submitted for classifications not included in DOL's Service Contract Act Directory of Occupations. The description must include the federal wage grade equivalent. The contractor should include all pertinent documentation supporting his request.
- If the contractor has further questions about a conformance process, he/she may contact the nearest Regional Office of the U. S. Department of Labor, Wage and Hour Division